

STATE OF RHODE ISLAND AND  
PROVIDENCE PLANTATIONS,  
DEPARTMENT OF HEALTH, BOARD  
OF MEDICAL LICENSURE AND  
DISCIPLINE

In the Matter of:  
TAREK H. EL GABRI, M.D

C95-335  
96-266  
96-269

DECISION

This matter came on for hearing before three members of the Board of Medical Licensure and Discipline sitting as the hearing committee (hereinafter Board) pursuant to § 5-37-5.2<sup>1</sup>

The Specification of charges against the Respondent, Tarek H. El Gabri, M.D. is dated September 17, 1996 and alleges that the Respondent engaged in unprofessional conduct as same is defined in § 5-37.5.1 (7) and (19) of the General Laws. (State's Exhibit 1) Specifically, it was alleged that with respect to two of his patients, the Respondent engaged in unprofessional and willful misconduct in that he engaged in sexual contacts/relationships with each of them during the existence of the doctor/patient relationship, and that he committed boundary violations in the doctor/patient relationship which violated the acceptable standard of care. With respect to a third individual, the wife of one of Respondent's patients, it was alleged that Respondent committed sexual contact toward her during the period of time when other close family members were under the care and treatment of Respondent.

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1 During the course of these proceedings, one of the original appointed hearing committee members took ill and was unable to continue as a member of the hearing committee. The Director of Health designated the appointment of a replacement member. That individual read the transcript of proceedings through his appointment date and participated in the balance of the proceedings, in particular the determination of the findings and conclusions set forth herein. The Respondent moved for a dismissal of the charges and/or for complete rehearing of this matter, which Motion the Board denied.

Prior to commencement of the within proceedings, the Respondent's medical license was already under suspension, having been summarily suspended by the Director of Health on September 13, 1996 pursuant to § 5-37-8. (State's Exhibit 2) Respondent's appeal of that order is a matter for decision in this proceeding.

Hearings commenced September 18, 1996 and continued on diverse dates through and including June 16, 1997. At the outset, Respondent's counsel argued that pursuant to § 5-37-8, Respondent was entitled to have this matter heard in its entirety within ten (10) days of the Summary Suspension. The State argued that the only requirement was that a hearing be commenced within that time period. The record will reflect that the hearing itself involved approximately eighteen (18) days of testimony and/or argument and included several requests for continuances on the part of both parties, the scheduling of numerous witnesses, and delays related to interim orders sought in the Rhode Island Superior and Supreme Courts.

Based upon the testimony and other competent evidence entered on the record, the Board makes the following

**FINDING OF FACT**

Respondent is a medical doctor specializing in the treatment of diseases of the ear, nose and throat.

Patient A commenced treatment as a patient of Respondent in 1992. She underwent surgery at the hand of Respondent in 1992. In January, 1995, the patient returned for treatment with Respondent. She had a follow-up appointment in March of 1995, at which time the Respondent asked her several personal questions about her relationship with her husband, a security guard. Respondent asked her if she would agree to meet him outside the office. The patient's next scheduled appointment was in May of 1995. Respondent asked her to go out with

him. She declined. Respondent engaged the patient in conversation regarding matters of a sexual nature, telling her personal information about his sexuality and asking that type of information from her. Respondent gave the patient his beeper and home phone numbers.

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On or about May 27, 1995, Respondent called the patient at her home and indicated a need to see her. He expressed to her that he was depressed. The patient allowed the Respondent to come to her home. Upon arriving at the patient's home, the Respondent presented her with gifts, a CD player (State's Exhibit 4) and several CDs (State's Exhibit 5). The Respondent told the patient that he made a lot of money and asked her if she would like to travel and receive money and gifts. Under questioning by Respondent, the patient finally admitted to Respondent that she had an inadequate sexual relationship with her husband. The Respondent then began hugging and kissing her, which eventually lead to their engaging in sexual intercourse in the patient's home. Respondent had brought with him condoms for the occasion. The patient described to the Board two large and irregular scars which appear on Respondent's hips as a result of bi-lateral hip surgery.

Thereafter, the Respondent contacted the patient several more times outside the office requesting sex and promising gifts, travel and money if the patient would go out with him. She refused.

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2 That date was attacked by Respondent's counsel as being inaccurate, and the Board acknowledges that the Patient may not have testified correctly as to the exact date.

At the patient's next appointment with Respondent, (June 19, 1995) Respondent exposed himself to the patient, showing her his erect penis and suggesting to her, "Look at me, I'm huge". The patient told the Respondent that she was not interested in any further relationship with him.

The patient told the Board that she felt that the Respondent was a good doctor, but that "something was not quite right".

The patient did not treat with the Respondent again, although she did bring her daughter there on one occasion, that being on or about June 27, 1995. Following that visit, the Respondent contacted the patient again, calling her from his home at approximately 9:45 p.m. The patient testified that he asked her to talk sexy, and that he began to talk to her about oral and anal sex. He asked if she would perform that on him. The patient began to cry and told the Respondent to stop immediately or she would report him to the appropriate authorities. The Respondent told her that he had influential friends, and that if she took any action against him, she and her daughter might be harmed. The next day he drove by her house, but she was entertaining family and he didn't stop.

After that conversation, the Respondent's staff called the patient several times, at Respondent's request, inquiring about her health. She told staff she was fine, and she did not speak to the Respondent again.

On cross examination, defense counsel established that patient A may have been incorrect in her testimony as to the dates upon which Respondent called her. Also, Respondent's counsel attacked her credibility by pointing out several inconsistencies in the patient's testimony, her complaint to the Board and a prior deposition taken. Defense counsel also brought forth the fact

that the patient has a pending civil action against the Respondent based on the facts set forth herein. Respondent attempted to introduce evidence as to the patient's psychiatric history. By Order of the Superior Court, Respondent was prevented from doing so (appeal denied. Supreme Court No. 96-516A)

Reviewing the evidence and testimony as to Patient A, the Board finds that the patient's testimony is credible. That Respondent did seduce the patient into having sexual relations with him during the course of the doctor/patient relationship, and further, that he willfully attempted to force himself on the Respondent against her desires on at least one occasion while she was in his office for treatment, to wit: June 19, 1995.

Patient B began treatment with Respondent for a deviated septum and related problems in March of 1995. This patient was seen by the Respondent in his Burrillville office, which is the community of her residence. The Respondent performed surgery on this patient on May 1, 1995. Thereafter, she saw him in follow-up at least bi-weekly through the summer.

During her sessions with the Respondent, he would inquire about the patient's family life. She felt as though the Respondent cared about her. She told him she was a recovering alcoholic, that her father had recently died, that she was depressed and experiencing marital problems "He seemed to care."

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3 Patient A and the wife of Patient C were treated by Respondent in his Warwick Office. There was no evidence introduced which would indicate that any of these three individuals knew each other.

Sometime in the summer of 1995, the patient informed the doctor that her health insurance carrier would no longer pay for his services. Respondent, nevertheless, agreed to continue his treatment of the patient. About that time, the patient's visits became more "personable". Respondent told the patient many things about himself, his children, his family in Egypt, and the fact that one of his brothers was institutionalized as a result of a mental breakdown. The Respondent began flirting with the patient e.g. putting his hands on her legs, and gave her a necklace which he said he had specifically purchased for her in Tunisia (State's Exhibit 7).

The patient told the Board that she thought she was falling in love with the Respondent. She told the Respondent she had a sexually related dream about him. He gave her his beeper number, so she could page him if she needed him. She did use the beeper to page the Respondent, and he called her at home. They arranged to meet at the Burrillville office on a Thursday morning at 8:30 A.M. before staff arrived for work. The meeting occurred in mid-August or early September of 1995. On that occasion, the Respondent took the patient into the soundproof booth within the office and had sexual intercourse with her.

The patient continued her medical treatment with Respondent, and their personal relationship intensified. They again engaged in sexual intercourse in the soundproof booth. The Respondent gave her a cell phone with which to contact him without the knowledge of the patient's husband. Following the second sexual encounter in the office, the patient and the Respondent arranged to meet elsewhere. The patient testified that she would meet Respondent at her work out gym, and from there they would go other places to have sex. On one occasion, they went to the "Kings Inn" in Putnam, Connecticut. She registered while the Respondent

stayed in the car. They had sex at that location.

On another occasion, the patient met the Respondent at the Lincoln Mall, and they went to a room at the Suisse Chalet, where they had sex several times.

On yet another date in late September or early October, 1995 they drove to a "Days Inn" in Willimantic, Connecticut where they had sex. During this time period, the patient was continuing under the medical care of Respondent. She told the Board that she was calling the Respondent most every day on his beeper, and he would return those phone calls. (Phone records in evidence reflect approximately 100 phone calls between the Patient and Respondent, which calls were largely initiated by Respondent)

On November 22, 1995, Respondent made an appointment for the patient to give him a facial at her place of employment (See State's Exhibit 8). They had sex in the facial room on that occasion. The Respondent paid \$55.00 for the facial and gave the patient a \$60.00 tip.

On November 25, 1995, at an office visit, the Respondent gave the patient a gold bracelet for her birthday (State's Exhibit 9).

On December 17, 1995, the Respondent arranged for a rendezvous at the Thompson  
4 Manor. The patient described the room to the Board. The Respondent took the patient there on that date. They drank non-alcoholic wine, listened to music before a fireplace and engaged in sexual intercourse. Respondent also gave her another bracelet (State's Exhibit 10).

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4 Also referred to at other times on the record as the Lord Thompson Inn.

Following that meeting, the Respondent went to Egypt for a time, returning to Rhode Island in mid-January, 1996. Upon his return, the Respondent called the patient and gave her a gift of a leather bag, which he stated he had purchased for her while in Egypt. (State's Exhibit 12). Thereafter, the Respondent and patient arranged to meet at the patient's friend's house, where they again had sex, and the Respondent gave her several more gifts.

Sometime in January 1996, the patient's husband found the cell phone which the Respondent had given her. He began to suspect a relationship between the patient and the Respondent. At an office visit with the patient in February, 1996, the patient and Respondent attempted to convince the husband that he was mistaken in his suspicions. The patient testified that she was in love with the Respondent, that she felt that he was a "prestigious" doctor paying attention to her, and that he would do anything for her. The patient was fearful that her husband would cause harm to her or to the Respondent, and that he would seek custody of their son in a divorce action, so she collaborated with the Respondent to deny their relationship. The Respondent tape recorded the conversation which took place in his office with the patient and her husband (Respondent's Exhibit B). Thereafter, the relationship ceased.

On cross-examination, Respondent's counsel attempted to discredit the patient by introducing into evidence a bankruptcy petition filed by the patient. (Respondent's Exhibit A). He also brought forth the fact that she had filed a workers compensation claim in 1989.

The Board specifically finds that information deduced in cross-examination of the patient as to her prior history has no bearing on the complaint before the Board. It is clear from the testimony of the patient, (she, too described scarring on the body of the Respondent) the testimony of a supporting witness and the other evidence on the record, that the Respondent



wilfully engaged in a sexual relationship with Patient B during a time period in which the Respondent was aware that the patient was depressed and vulnerable. Further, that the activities complained of took place during the course of a continuing doctor/patient relationship.

The third complainant was not a patient of the Respondent, but rather the wife of a patient. She met the Respondent in May of 1996 when her husband was operated on by the Respondent. At the time in question, the complainant and her husband were newlyweds, having been married approximately two weeks previous. The complainant told the Respondent that both she and her husband were recovering substance abusers. She related that fact to the Respondent to assist him in the treatment of her husband, who experienced post surgical symptoms which required his emergency admission to Kent County Memorial Hospital and hospitalization in the intensive care unit for a two (2) day period.

After his discharge from the hospital, the complainant took her husband to the Respondent's office for follow-up treatment. On that date, June 10, 1996, while her husband was in another room, the Respondent told the complainant that he wanted to "fuck" her and asked her if she could "feel the vibes". The complainant was upset, but afraid to tell her husband what happened, so she said nothing.

Following that visit, the complainant next went to Respondent's office on June 22, 1996 in connection with follow-up treatment for her husband and allergy testing for her son (child of a prior relationship). During the course of treating her son, the Respondent sent him out to the audiology room, leaving Respondent and complainant alone in the examining room. He asked her to move closer to him, so he wouldn't have to shout. When she did, she saw that he had

an erection. He asked her if it was "big enough". He forced her to touch his penis twice, through his trousers, while asking her if she "liked it in the front or the back". Her son then returned to the room. On that date, the Respondent also examined the complainant's husband. After completing his examination of her husband, the Respondent asked to see the complainant alone. She thought, as she testified, that Respondent wished to give her instructions regarding her husband's medical care. Instead he berated her for not calling him while his wife was away. When she attempted to leave the room, he blocked her way and thrust his pelvis at her. He asked to see her "pussey" and her "tits". When she refused, he pulled her shirt down from the neck and kissed her breast. She pushed him away and ran out of the room.

The complainant testified that she was afraid to tell her husband what had happened, but she was more afraid of returning to the Respondent's office. So, after worrying about it for three (3) weeks, she finally told her counselor about the incident. She filed a complaint with the Board and notified the Warwick Police Department.

The Board finds that the testimony of this complainant is credible and convincing that the Respondent did attempt to force himself sexually upon her. The activities engaged in by Respondent with respect to this individual were wilful and unwarranted, and they exceeded the boundaries for appropriate physician contact with the family of a patient.

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5 The Complainant's husband did not have a driver's license which is why the complainant accompanied him to Respondent's office.

The Respondent was called by the State to testify as an adverse witness. The Respondent provided the Board with evidence concerning his medical background, personal history and other matters related to his practice. He declined to answer any questions with respect to the complaints at issue, invoking his 5th amendment privilege. The Board recognizes the Respondent's absolute right to invoke his 5th amendment privilege in light of other proceedings which may be pending against him, and the Board specifically attaches no inference of guilt or other adverse finding as a result of the Respondent's invocation of the privilege. The Respondent did admit to having a bi-lateral hip surgery and to having a "zipper like" scar, which is how Patient A described it.

As its final witness, the State produced expert testimony from Don Jaffe, M.D., a physician, licensed to practice in Massachusetts who is board certified in the specialty area of otolaryngology. He testified that while he knows of no specific publications involving "boundary rules", doctor/patient relationships are governed by a national standard. He testified unequivocally that it is not acceptable for a doctor to seek a meeting with a patient outside the office for "interpersonal", "sexual" or "romantic" reasons. He stated that avoiding personal relationships with patients is basic to the practice of medicine. It is taught in medical school and fostered in peer groups and medical seminars. Maintaining interpersonal romantic relationships with patients is inappropriate conduct for a physician.

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6 While Dr. Jaffe testified as an expert, it is also noteworthy that the hearing panel in this matter consists of two (2) medical doctors and one (1) consumer. The panel members are entitled to utilize their expertise in determining whether the Respondent's actions were appropriate for a medical doctor in the practice of medicine.

Respondent's counsel called several witnesses who were staff at Respondent's various offices. All of them testified that it was general procedure and practice in Respondent's examination of patients that an office staff person would be in the examining room assisting the doctor while he was treating patients. Several of the witnesses testified that they were familiar with the three complainants, and that at no time did those witnesses observe any of the three complainants to be upset or flustered upon leaving the doctor's office. The Board accepts the statements of Respondent's employees as being indicative of what the general office procedure may be, however, several other patients of the Respondent were called by the State in rebuttal. Each of them testified that when she received treatment from the doctor, she was alone with him in the examination room. Therefore, the Board finds that if there was in existence an office policy with respect to staff presence in the examining room, it was not uniformly adhered to by the Respondent and/or his staff.

The Respondent's office manager, who is still employed by him despite the fact that he is not now in practice, also contradicted Patient A's account of her daughter's emergency appointment with Respondent. The office manager stated that the fact that the appointment was noted in the appointment book (Respondent's Exhibit G) indicates that it was not an emergency, but rather that the appointment was made in advance. The Board notes that there are some minor inconsistencies in witness testimony involving the exact details of and dates of pertinent events occurring almost two (2) years ago. However, those inconsistencies do not adversely affect the credibility of the overall testimony given by the complainants. The office manager further testified that Patient A was a demanding and difficult patient, and that she always wore "very tight, short clothing". Likewise, the Board finds that such testimony does not contradict

that of the patient, nor does it justify Respondent's actions with respect to the patient. This same witness, the office manager, also testified that with respect to the complainant patient's wife, the office manager was in attendance at all times when the doctor was with the complainant, and that none of the activities complained of transpired in her presence. The Board does not find the witness' testimony credible in that regard.

Other patients were called by Respondent to testify in his behalf. Several of them said that he was always accompanied by another staff person while treating them, and all testified that they were treated appropriately by the doctor. The Board finds that such testimony is not so persuasive as to defeat the credibility of the testimony and other evidence furnished by the State as to the three individual complainants.

### CONCLUSIONS

The State has proven by clear and convincing evidence, including, but not limited to witness testimony, telephone records and other demonstrable evidence, all of which is contained in the record, that the Respondent engaged in and fostered sexual relationships with Patient A and Patient B during the period of time in which he was also treating each of them for medical problems. Further, the State has proven by clear and convincing evidence that the Respondent attempted sexual contact with the wife of Patient C. The anxiety of the wife and her need to rely on the Respondent's appropriate and non-exploitative conduct resulted in a duty owed by the Respondent to the wife very nearly identical to that duty which the Respondent owed the patient himself.

The accepted standards of medical practice do not permit the existence of a sexual relationship between a doctor and his patient, nor do we believe, a doctor with a family member who is so closely affiliated with the patient as to be married to him.

The Board also concludes that Respondent's conduct was wilful and intentional, and with respect to the wife of Patient C, took place at a point in time when Respondent knew that he was already under investigation for incidents relating to Patient A.

Further the Board concludes that these patients and family member were chosen by Respondent specifically because of their extreme vulnerability, based upon confidential information which the Respondent gained through the doctor/patient relationship.

In light of the Respondent having established a pattern of seriously exploitative conduct with these three (3) persons, the Director of Health had good and sufficient cause to believe that continuation in the medical practice by Respondent constituted as imminent danger to the public and she was justified in issuing a Summary Suspension of Respondent's medical license in September, 1996.

The board hereby concludes that the Respondent is guilty of unprofessional conduct in that he engaged in immoral conduct (§5-37-5.1 (7) and wilful misconduct by failing to conform to minimal standards of acceptable and prevailing medical practice in his area of expertise as determined by the Board (§5-37-5.1 (19)).

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7 At the commencement of these proceedings, counsel for the Respondent sought to have to Respondent tried separately on each complaint. The Board denied that Motion on the basis of the fact that it is the very pattern which Respondent established which caused the Director to act initially, and with which this Board must be concerned in rendering a Decision which will be in the public interest.

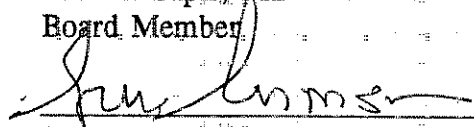
ORDER

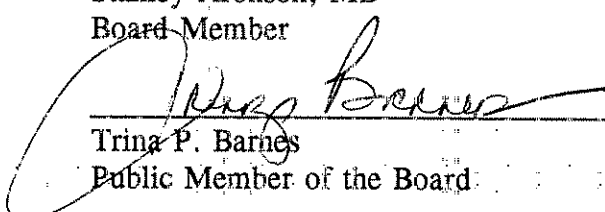
Based upon the foregoing, the Board hereby orders the following:

- 1.) That Respondent's appeal of the Summary Suspension issued September 13, 1996 is DENIED.
- 2) Pursuant to the specification of charges, and based upon the Findings and Conclusions, set forth herein, the Respondent's medical license is hereby REVOKED.


Entered this 6th day of August 1997.

  
Paul E. Sapir, MD  
Board Member

  
Stanley Aronson, MD  
Board Member

  
Trina P. Barnes  
Public Member of the Board

RATIFIED AND APPROVED BY THE DIRECTOR OF HEALTH:

  
Patricia A. Nolan, MD, MPH

NOTICE

This Decision may be appealed to the Superior Court of the State of Rhode Island within thirty (30) days hereof.

CERTIFICATION

I, hereby certify that I mailed a true copy of the within Decision to Bruce McIntyre at Department of Health, Room 204, Providence, Rhode Island and to J. Richard Ratcliffe at 2500 Hospital Trust Tower, Providence, Rhode Island, sent on this 7th day of August 1997.

*Jaqueline C. Landry*